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**MAR 17 2006**

**OFFICE OF PETITIONS**

In re Application	:
Landis, et al.	:
Application No. 09/911,367	: DECISION ON APPLICATION
Filed: July 23, 2001	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. 032026-0594	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 35 U.S.C. § 154(b)(3)(B)(ii)", filed February 23, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred eleven (211) days to three hundred seventy-two (372) days.

The application for patent term adjustment is GRANTED to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **three hundred forty (340) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 10, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is two hundred eleven (211) days. On February 23, 2004, Applicants timely<sup>1</sup> submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is three hundred seventy-two (372) days.

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<sup>1</sup> Applicants filed the application for patent term adjustment prior to payment of the issue fee.

Applicants assert entitlement to a patent term adjustment of three hundred seventy-two (372) days on the basis that the PTO improperly assessed Applicants a delay of one hundred forty-five (145) days for responding to a Notice to File Missing Parts mailed on September 26, 2001. Applicants assert that they filed a complete response on January 11, 2002, and as such should only have been assessed delay of sixteen (16) days.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of two hundred eleven (211) days based on an adjustment for PTO delay of three hundred fifty-two (352) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1) and four (4) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. §1.703(a)(2), reduced by Applicants' delay of one hundred forty-five (145) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b). The adjustment of fifty-six (56) days is at issue.

The adjustment of one hundred forty-five (145) days has been found to be incorrect. A review of the application file reveals that a Notice to File Missing Parts of Nonprovisional Application was mailed on September 26, 2001. Applicants filed a complete response to this notice on January 10, 2002.<sup>2</sup> As this was not timely pursuant to 37 C.F.R. § 1.704(b), applicant delay of sixteen (16) days should have been assessed, not one hundred forty-five (145) days.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date. A decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentees may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of §

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<sup>2</sup> It is noted that the Office mailed a Notice of Incomplete Reply on February 26, 2002, requiring a declaration with the signature of inventor Owen. However, a review of the declaration filed on January 11, 2002 reveals that the signature was present. Accordingly, it is concluded that the Notice of Incomplete Reply was mailed in error, and no 37 C.F.R. § 1.704(c)(7) reduction is warranted.

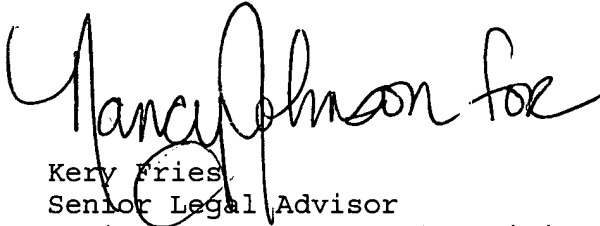
1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.<sup>3</sup>

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **three hundred forty (340) days** (356 days of PTO delay, reduced by 16 days of applicant delay).

The \$200.00 fee set forth in 37 C.F.R. § 1.18(e) has been charged to Deposit Account No. 50-2350, as authorized.

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Kery Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen

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<sup>3</sup> Applicants should note that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period of pendency before the Office except for periods excluded under 35 U.S.C. (b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A).

Day : Thursday  
Date: 3/16/2006

# PALM INTRANET

Time: 13:39:01

## PTA Calculations for Application: 09/911367

Application Filing Date:	07/23/2001	PTO Delay (PTO):	356
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	145
Post-Issue Petitions:	0	Total PTA (days):	340
PTO Delay Adjustment:	129		

## File Contents History

Number	Date	Contents Description	PTO	APPL	START
45	03/16/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		16	
44	03/16/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	145		
28	02/10/2004	MAIL NOTICE OF ALLOWANCE	4		22
27	02/10/2004	MAIL EXAMINER'S AMENDMENT			
26	02/09/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
25	02/09/2004	EXAMINER'S AMENDMENT COMMUNICATION			
24	02/09/2004	NOTICE OF ALLOWABILITY			
23	11/19/2003	DATE FORWARDED TO EXAMINER			
22	10/06/2003	RESPONSE TO ELECTION / RESTRICTION FILED			
21	09/10/2003	MAIL RESTRICTION REQUIREMENT	352		-1
20	09/08/2003	REQUIREMENT FOR RESTRICTION / ELECTION			
19	07/09/2003	CASE DOCKETED TO EXAMINER IN GAU			
18	03/23/2003	CASE DOCKETED TO EXAMINER IN GAU			
17	03/07/2003	CASE DOCKETED TO EXAMINER IN GAU			
16	05/22/2002	APPLICATION DISPATCHED FROM OIPE			
15	05/20/2002	APPLICATION IS NOW COMPLETE			
13	05/20/2002	APPLICATION DISPATCHED FROM OIPE			
12	05/20/2002	APPLICATION IS NOW COMPLETE		145	5
10	03/14/2002	ADDITIONAL APPLICATION FILING FEES			
9	03/14/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	01/11/2002	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
7	01/11/2002	AN ASSERTION THAT THE NATURE OF THE LEGAL ENTITIES HAVING PROPERTY RIGHTS TO THE PATENT AUTHORIZES T			

6	01/11/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
5	09/26/2001	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
3	09/25/2001	CORRESPONDENCE ADDRESS CHANGE			
2	07/31/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	07/23/2001	INITIAL EXAM TEAM NN			

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### EXPLANATION OF PTA CALCULATION

### EXPLANATION OF PTE CALCULATION

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